

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 285 of 1998

in

SPECIAL CIVIL APPLICATION No 4432 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

DIRECTOR OF PENSION AND PROVIDENT FUND

Versus

SUSHILABEN W/O. KILAVARSINH D JHALA

Appearance:

MR M.A.Bhukhari for Appellants

Ms.D.T.Shah for NILESH M SHAH for Respondents

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE A.M.KAPADIA

Date of decision: 22/02/2000

ORAL JUDGEMENT

This appeal which is filed under clause 15 of the
Letters Patent is directed against the judgement dated

October 21, 1997 rendered by the Learned Single Judge in Special Civil Application No. 4432/1994 by which a declaration is made that the respondent is entitled to family pension w.e.f. from October 1, 1977 and a direction is given to the respondents to determine the arrears of family pension payable to the respondent & pay the arrears of family pension with interest at the rate of 15% p.a. from May 1, 1990 til the date of payment thereof.

2. The respondent is the widow of deceased Kilavarsinh D Zala who was employed as a primary Teacher with Taluka Development Office, Taluka Panchayat, Kutch-Bhuj. After his demise, the respondent had requested the appellant to accord family pension benefits to her. That request was rejected by Joint Director, Pension and Provident Fund, State of Gujarat vide order dated May 12, 1992. In the said order, it was mentioned that deceased K.D.Zala had not died in harness and as he was absent from duty for a period of more than 3 years, the respondent was not entitled to family pension. As a result, the respondent with the help of Mahila Utkarsh Trust was compelled to file Special Civil Application No. 1242/92 for directions against the appellants for granting benefits of family pension to her. The Learned Single Judge allowed the said petition by the judgement dated October 21, 1993 and following operative order was passed:-

"Having regard to the facts and circumstances of the petition, the reliefs sought for by the petitioner no.2 could not be granted in absence of complete record of service. However, respondent no.2 District Primary Education Officer, represented by Mr.Munsha, learned counsel, is directed to complete all service record of deceased Kilavarsinh Zala forward the same to respondent no.1 and on receipt thereof, the respondent no.1 shall decide the case of the petitioner no.2 sympathetically and if it is found that deceased Zala had rendered total service of 5 years, than he would be entitled to the pensionary benefits in accordance with Govt. Circulars.

Hence, Respondent Nos. 2 to 4 are hereby directed to complete the pension papers of deceased Kilavarsinh Zala and forward the same to the respondent no.1 within two months from the date of receipt of writ of this order. It is further directed that on receiving the said papers, the

respondent no.1 shall take appropriate steps for taking appropriate decision within one month from the receipt of the papers from respondent nos. 2 to 4, and shall inform the petitioner no.2 accordingly.

With these directions, this petition is disposed of. Rule discharged. Interim relief, if any, stands vacated. Hence service permitted."

3. In compliance of the directions of the High Court referred to above, the pension papers of the deceased were forwarded by the District Primary Education Officer, Kutch to Office of the Directorate of Pension and Provident Fund, Ahmedabad but alongwith it no service record of the deceased was sent though there was a specific direction to the District Primary Education Officer to complete service record of the deceased and send the same to the Office of Directorate of Pension and Provident Fund, Ahmedabad. On receipt of pension papers of the deceased, the District Treasury Officer, Surendranagar addressed a letter dated January 15, 1994 to the respondent asking her to fill in particulars mentioned therein as well as form no.10 A which was also sent alongwith the said letter. The form sent alongwith the letter indicated that the respondent was entitled to family pension from 1.4.92 and not from 1.10.77. Under the circumstances, the respondent instituted Special Civil Application No. 4432/94 and prayed the Court to issue a writ of mandamus or any other appropriate writ or order directing the respondents to grant benefit of family pension to her w.e.f from October 1, 1977 with all consequential benefits. The Learned Judge has accepted the petition by judgement dated October 21, 1997 giving rise to the present appeal. Mr.M.A.Bhukhari, Ld. AGP submitted that the husband of the respondent was employed as a teacher from September 18, 1952 to December 3, 1959 and had thereafter not reported for work at all and therefore the respondent should not have been granted benefit of family pension w.e.f. from October 1, 1977. It was claimed that in view of the judgement of the High Court rendered in Special Civil Application No. 1242 of 1992, the appellants had extended the benefits of family pension to the respondent though her husband had rendered service for 7 years and not for 10 years as required by the resolution and therefore the petition ought to have been dismissed by the Learned Single Judge. What was stressed was that the case of the respondent for family pension from October 1, 1977 is not covered by Government Resolution dated May 11, 1990 and therefore the appeal should be allowed.

4. Ms.D.T.Shah, Ld. Counsel for the respondent pleaded that as per the judgement of the High Court in Special Civil Application No. 1242 of 1992, the respondent is entitled to family pension if it was found that her deceased husband had rendered total service of 5 years and therefore the respondent being eligible to receive family pension in view of the judgement of High Court in Special Civil Application No. 1242 of 1992, was entitled to the said benefit w.e.f. 1.10.1977 under Government Resolution dated May 11, 1990. It was claimed that the directions of the High Court in Special Civil Application No. 1242/92 were never fully complied with by the District Primary Education Officer in as much as service record of the husband of the respondent was never completed nor forwarded to the Office of the Directorate of pension and Provident Fund, Ahmedabad and therefore the just directions given by the Learned Single Judge should not be interfered with in the present appeal. What was stressed was that no cogent reasons are assigned by the appellant as to why the respondent is entitled to family pension from 1.4.92 and not from 1.10.77 and therefore the action of the appellants being arbitrary, the appeal should be dismissed.

5. We have heard the Learned Counsel for the parties & have taken into consideration the documents which form part of Special Civil Application No. 4432/1994. Earlier by an order dated May 12, 1992 request made by the respondent no.2 to accord benefits of family pension to her was turned down on the ground that her husband had remained absent from duty for a period of more than 3 years. This order was challenged by the respondent in Special Civil Application No. 1242/92 which was allowed and the District Primary Education Officer was directed to complete the service record of the deceased and forward the same to the Office of the Directorate of Pension and Provident Fund, Ahmedabad so that the proper decision can be taken by the said office. It is an admitted position that service record of the deceased was never completed by the District Primary Education Officer nor sent to the Office of the Directorate of Pension and Provident Fund, Ahmedabad while forwarding the pension papers of the respondent. In Special Civil Application No. 1242/92 it was specifically held that the respondent would be entitled to family pension if it was found that the deceased husband of the respondent had rendered in all service of 5 years. We may state that this judgement was never challenged by the appellants before higher forum and it was accepted without any reservations. Therefore in terms of this judgement the respondent was

entitled to pensionary benefits if it was found that her deceased husband had rendered total service of more than 5 years. In ground (B) of memorandum of appeal itself, it is pleaded by the appellants that deceased had served as a teacher from 18.9.1952 to 3.12.59 i.e for a period of more than five years. It is not the case of the appellants that it was found that the husband of the respondent had not rendered total service of 5 years. Under the circumstances, the respondent is entitled to family pension benefits in view of the judgement of the High Court notwithstanding the government circulars. Though an affidavit in reply to the petition was filed by Mr.Umesh R Shah, Accounts Office, Directorate of Pension and Provident Fund, Ahmedabad, it is not disclosed in the said affidavit as to from which source he had learnt that the husband of the respondent had remained absent for a period of more than 8 years. We may state that affidavit in reply was filed after reading only the copy of the petition and it was never the case of Mr.Umesh R Shah that he had perused the service record of the deceased before making a bald statement in the reply that the husband of the petitioner had remained absent for a period of more than 8 years and therefore the respondent was not eligible for family pension. The following observations made by the Learned Single Judge in the impugned judgement are not controverted by the appellants at all.

"During the course of arguments, the Learned Counsel for the respondents contended that service record of the husband of the petitioner is not traceable. It has however been contended that the Taluka Development Officer, Taluka Panchayat, Kutch Bhuj has not sent service record of the husband of the petitioner."

It means that without referring to the service record, it was sought to be contended on behalf of the appellants that as the husband of the respondent had remained absent for a period of more than 8 years, the respondent was not entitled to family pension. This stand taken on behalf of the appellants can hardly be appreciated, more particularly, in absence of any service record. Though it is pleaded by the Learned Counsel for the appellants that the case of the respondent is not covered by resolution dated May 11, 1990 a bare perusal of the said resolution which is on page 17 of the appeal compilation makes it more than clear that the said resolution is applicable to the respondent also under which the benefit of Family Pension Scheme, 1972 is extended to all eligible members of the family including

dependents w.e.f. October 1, 1977 at the rates prescribed in the Finance Department Resolution dated October 29, 1975 because the respondent is found eligible to receive family pension in terms of the judgement of High Court rendered in Special Civil Application No. 1242 of 1992. The resolution dated May 1, 1990 has been passed for giving benefit of family pension to eligible widow of the family w.e.f. October 1, 1977 and the action of the appellants in not extending the benefit of that resolution to the respondent was rightly found to be arbitrary and unjustified by the Learned Single Judge. The respondent having made out the case for payment of family pension from October 1, 1977, it cannot be said that any error was committed by the Learned Single Judge in accepting the petition. Though the respondent was entitled to family pension from October 1, 1977, she was unnecessarily compelled to initiate litigation and denied the benefits of resolution which is salutary in nature. Therefore, we are of the opinion that the Learned Single Judge was justified in directing the appellants to pay arrears of family pension to the respondent with interest at the rate of 15% p.a. from May 1, 1990 till the date of payment thereof. In our view no ground is made out by the appellants to interfere with the judgement impugned in the appeal and therefore the appeal is liable to be dismissed.

6. For the foregoing reasons, the appeal fails and is dismissed with costs. As the appeal is dismissed, stay of the operation and implementation of the judgement of the Learned Single Judge impugned in this appeal which was granted earlier is hereby vacated. The appellants are directed to comply with the directions of the Learned Single Judge in Special Civil Application No. 4432/1994 as early as possible and within two months from the date of receipt of the writ. The Office is directed to send copy of the writ to the appellants immediately.

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